

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Division

39

JOHN RICHARD JAE,
Plaintiff,

vs.

DR. ROBERT CLARK, et al.,
Defendants.

ORIGINAL

Civil No. 1:00-GV-00-109

U.S. District Judge Ram
Magistrate Judge Smyser

FILED
HARRISBURG

OCT 30 2000

MARY E. D'ANDREA, CLERK

Per PLAINIFF TO REVIEW
DEPUTY CLERK

MOTION FOR ORDER ALLOWING
AND COPY HIS PRISON PSYCHIATRIC/MENTAL HEALTH RECORD

COMES NOW, the Plaintiff & his counsel in the above-entitled

Action, John Richard Jae, as a Layman Unlettered in the Arts & Sciences of the Laws & legal procedures within the United States, in the above-entitled Civil Action & moves this Court for an Order Allowing Plaintiff to Review And Copy His Prison Psychiatric/Mental Health Records, avers, deposes & States:

1. That, based upon & for the reasons & arguments as stated in the Brief In Support of Motion For Order Allowing Plaintiff Review And Copy His Prison Psychiatric/Mental Health Records, & simultaneously with this motion and based upon the papers filed herein this case, this Plaintiff requests this Court to an order in the above-captioned case, allowing Plaintiff to Review And Copy His Prison Psychiatric/Mental Health Records from October 1, 1991, to October 10, 2000, here at this Prison.

(WHEREFORE, Plaintiff John Richard Jae, prays that this Court will enter an order, herein this case, allowing Plaintiff to Review And Copy His Prison Psychiatric/Mental Health Records from October 1, 1991, to October 10, 2000, here at this Prison:

AND HE SHALL EVER PRAY
RESPECTFULLY SUBMITTED:

(s) John Richard Jae
MR. JOHN RICHARD JAE
Plaintiff and his Counsel

MR. John Richard Jae,

#BQ-3219

SCC-CAMP HT11

P.O. BOX 00

HT PA 17001-000

Dated: 7th OCTOBER 2000:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Division

JOHN RICHARD JAE,
Plaintiff,

vs.

D.R. ROBERT CLARK, et al.,
Defendants.

CIVIL No. 1:00-CV-00-1090

U.S. District Judge Rambo
Magistrate Judge Smyser

BRIEF IN SUPPORT OF MOTION FOR ORDER ALLOW PLAINTIFF TO REVIEW
AND COPY HIS PRISON PSYCHIATRIC/MENTAL HEALTH RECORDS

I. STATEMENT OF THE CASE

On or About June 5, 2000, Plaintiff John Richard Jae, filed this Civil Right Action in this Federal Court, against Defendant Dr. Robert Clark, Chief Warden Psychiatric at the State Correctional Institution at Camp Hill, alleging claims under 42 U.S.C. § 1983, Violations of his Rights of the Law under the 14th Amendments of the U.S. Constitution, Article I of the Pennsylvania State Constitution & under Pennsylvania State Tort Law and requested leave to proceed in forma pauperis, herein.

On June 21, 2000, this Court granted Plaintiff's Request for leave to proceed in forma pauperis, herein.

On or About August 3, 2000, Plaintiff filed an Amended Complaint as a right under R. Civ. P. Rule 15(a), naming Martin L. Dragovich, SCI-Camp Hill Superintendent, J.B. Palakovich, SCI-Camp Hill Deputy Superintendent for Centralized Services, Robert N. Nibbel, Deputy Superintendent for Facilities Management, SCI-Camp Hill, Michael J. Kozar, Chief of Program Manager, SCI-Camp Hill, and John Andrade, SCI-Camp Hill Hearing Examiner as additional Defendants, herein this case.

On or about September 8, 2000, Corrections Defendants Dragovich, Palakovich, Kozar & Andrade, through their Counsel of Record, filed their Motion to Revoke Plaintiff's In Forma Pauperis Status And To Defer Filing of Responsive Pleading to Plaintiff's Amended Complaint And Appendix In Support of Corrections Defendants Motion to Revoke Plaintiff's In Forma Pauperis Status And To Defer Filing of Responsive Pleading to Plaintiff's Amended Complaint herein this case.

On October 6, 2000, Magistrate Judge J. Andrew Smyser, of this Court, ordered AND NOW, this 6th day of October, 2000, IT IS HEREBY ORDERED that within fifteen days of the date of this order defendants Dragovich, Palakovich, Nibbel, Kozar and Andrade, shall file any responsive pleadings herein.

fourteen days after the filing of the brief and evidence by defendants Dragovich, Palakovich, Dubinsky, Kazar and Andrus, the Plaintiff shall file any relevant evidence he wishes concerning the issue of imminent danger and a brief in opposition to the motion to revoke his in forma pauperis status. //

Plaintiff now files his Motion for Order Allowing Plaintiff to Review And Copy His Prison Psychiatric/Mental Health Records, herein this case. In his Brief In Support of Motion for order Allowing Plaintiff to Review And Copy His Prison Psychiatric/Mental Health Records.

Plaintiff now avers & submits, that, given the fact that Corrections Defendants already challenged his statement that he is under imminent danger of serious physical injury, herein, and given the Court's above order of October 6, 2000 and what its orders, it is incumbent upon this Court to order that Plaintiff be allowed to Review And Copy His Prison Psychiatric/Mental Health Records, in order to enable this Plaintiff to comply with this Court's above October 6, 2000 order, to file any relevant evidence, and unless this Court grants this here Motion, Plaintiff will be unable to obtain any relevant evidence to file, will be unable to adequately defend against Corrections Defendants' Motion to Revoke Plaintiff's in forma pauperis status And to Defend Filing of Responsive Pleading to Plaintiff's Amended Complaint, and will thus be denied his First Amendment Rights to "Adequate", "Effective" & "Meaningful" Access to the Courts" and his First Amendment Rights to due process of the law under the Constitution of the United States.

Plaintiff furthermore avers & submits, that, it is necessary for this Court to order that he be allowed to Review & Copy His Prison Psychiatric/Mental Health Records, herein this case, because of the Pa. Dept. of Corrections Prison Administrative Directive, DC-ADM.#003.1-K.D.1., which states:

"Access by the inmate or his attorney: Inmates may discuss any facet of their mental health treatment with treatment staff. However, neither the inmate nor his attorney shall be permitted to review or have copies of any of his mental health records unless production is requested by an attorney representing the Bureau of Correction."

and based upon such policy it would be futile for this Plaintiff to file any Motion Request for production of documents for such Prison Psychiatric/Mental Health Records with Defendants' counsel, as counsel would only deny such to this Plaintiff based upon Plaintiff's past knowledge and experience with this same defense counsel, herein, denied such record to this Plaintiff previously during discovery proceedings therein. //

et al., Civil No. 1:00-cv-0071, also pending before this Court.

That, Plaintiff avers & submits, that, DC-ADM. #003 of the Pa. Dept. of Corrections, will provide this Plaintiff with Prison Mental Health/Psychiatric Records only when ordered to by a Court during the course of litigation.

DC-ADM. #003. V.E. states:

"Release of health records during the course of litigation: The institution shall provide originals or copies of records whenever directed to do so by Court order ~~by~~ by an attorney who is representing the Bureau of Correction or its employees. Under these circumstances, the copies of health records are released directly to the inmate, the documents shall be marked to show that he has obtained the documents through legitimate means."

See also DC-ADM. #003. V.D. 1.

So there is provisions for what this plaintiff requests herein and all this Court has to order that this plaintiff gets such as he will.

Furthermore, Plaintiff avers & submits, that, according to Title 55. Public Welfare Chapter 500. Mental Health Procedures (55 § 5100.33-(c)(1)(2) of the Pa. Code (c) - A person who has received a receiving treatment may request access to his record, and shall be denied such access to limited portions of the record only:

(1) Upon documentation by the treatment team leader, it is determined by the director that disclosure of specific information concerning treatment will constitute a substantial detriment to the patient's treatment;

(2) When disclosure of specific information will reveal the identity of persons or breach the trust or confidentiality of persons who provided information upon a agreement to maintain their confidentiality."

That, Plaintiff avers & submits, that, his Counselor, here at SCI-CM Special Needs Unit (SNU), Lee Kenstetter, has told this Plaintiff that the Pa. State Mental Health Procedures/Laws do apply to this Unit here.

Plaintiff furthermore avers & submits that, he will "not" use these records for any improper purpose, nor will he allow anyone to photocopy and/or copy such without this Court's or the Corrections/Prison official

Furthermore, a privilege cannot be used to protect information about someone that the litigant himself put in issue, see EE-DC v. General Telephone Co. of North West, Inc., 885 F.2d 575, 578 (9th Cir. 1989), cert. denied, 111 S.Ct. 370 (1990); Anderson v. Nixon, 44 F.Supp. 1195, 1199-1200 (D.D.C. 1978).

Furthermore, Prison Officials may not assert that information is privileged if they have released it to other persons. A privilege should not be regarded as a right which can be disclosed to some and withheld from others. See In re Natta, 48 F.R.D. 319, 322 (Del. 1969); accord, Matter of Continental Illinois Securities Litigation, 732 F.2d 1302, 1314 (7th Cir. 1984); Benjamin v. Kemp, 97 F.R.D. 413, 416 (W.D. Mich. 1983); Clark v. Four of Falls, 124 F.R.D. 91, 94 (E.D. Pa. 1988).

Herein this instant case, Corrections Defendants brought up the issue of Plaintiff's Mental History when they challenged his contention of imminent danger of serious physical injury/mental health history and his risk of committing suicide, herein, in their Motion In Forma Pauperis Status And Brief In Support and the Corrections Defendants released Plaintiff's Prison Psychiatric/Mental Health Records to their Counsel of Records, who then released such records to Dr. Clark's Counsel & to this Court, in Corrections Defendants Response To Plaintiff's Motion For A Temporary Restraining Order And/or An Expedited Preliminary Injunction, and thus they cannot now argue that such records are privileged and should be withheld from this Plaintiff, herein.

(W) HEREOF, based upon that argued & set forth above & upon, herein this Plaintiff, UPON that set forth in the Motion For Order Allowing Plaintiff's Review And Copy Of Psychiatric/Mental Health Records, itself, & upon the files & papers in this case, this Court grants the motion, in its entirety, herein this Civil Action:

RESPECTFULLY SUBMITTED:

(S) John Richard Jae
MR. JOHN RICHARD JAE
Plaintiff and his Counsel

Dated: 10th OCTOBER 2000:

MR. JOHN RICHARD JAE,
#BQ-3219
SCI-CAMP HT/1
P.O. Box 200
Camp Hill, PA 17011

CERTIFICATE OF SERVICE

I Certify that on 10/12/00, I mailed to the Persons listed below, a true & correct copy of each of Plaintiff's Motion For Order Allowing Plaintiff's Review And Copy His Psychiatric/Mental Health Records And Brief In Support Plaintiff's Motions For Enlargement Of Time, by way of Class Mail, Postage Prepaid:

I Certify that on 10/12/00, I gave to Prison Officer the originals of each of the above-same documents mailing to this Court:

I Certify under penalty of perjury and pursuant to 28 U.S.C. that the above, is true & correct:

MR. JAMES D. YOUNG, ESQUIRE
LAVERY, FAIRBANKS, YOUNG & PATTERSON, P.C.
Attorneys At Law
P.O. Box 1245
Harrisburg, PA. 17108-1245

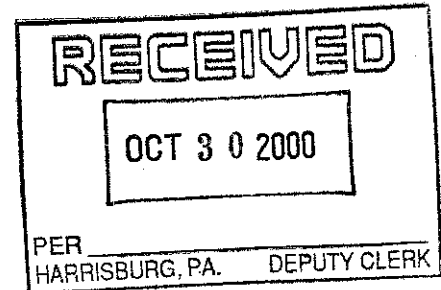
MR. Robert M. Wolff
Assistant Counsel
Pennsylvania Department of Corrections
Office of the Chief Counsel
55 Utley Drive
Camp Hill, PA. 17011

Executed/ Dated on:
12th OCTOBER 2000:
At: Camp Hill, Pennsylvania:

(S) John Richard
MR. JOHN RICHARD
Plaintiff and Pro Se

From The Desk of
MR. John Richard Jare,
#BA-3219
Sgt-Camp Hill
P.O. Box 200
Camp Hill, PA. 17001-0200
October 12, 2000

13: The Office of the Clerk,
United States District Court
228 Walnut Street
P.O. Box 983
Harrisburg, PA. 17108-0983



Re: Jare vs. Clark, et al.,
Civil No. 1:CV-00-1090

Dear Clerk:

Please File the Enclosed Plaintiff's Motion For
Allowing Plaintiff To Review And Copy His Prison Psychiatry/Mental Health
Records and Brief In Support, and Plaintiff's Motion For Enlargement
Time, herein the above-captioned Civil Rights Action.

cc: MR. James D. Young, Esq.,
MR. Robert M. [unclear]

Sincerely,
(S) John Richard Jare
MR. JOHN RICHARD JARE
Classroom B, Camp Hill